

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)

v.)

LAMONT KORTEZ GAINES,)

Defendant.)

Case No. 1:17-CR-106-TSE-4

The Honorable T.S. Ellis, III

NOTICE

On July 13, 2018, this Court stayed Defendant Gaines's case pending the decision of the Fourth Circuit in *United States v. Simms*, No. 15-4640. Dkt. 221. The Court further ordered the parties "to notify the Court when a decision is reached in *Simms*." *Id.* The Fourth Circuit heard oral argument in *Simms* on September 26, 2018. Defendant Gaines is hereby notifying the Court that on January 24, 2019, the Fourth Circuit rendered its decision. *See United States v. Simms*, No. 15-4640, slip op. (4th Cir. Jan. 24, 2019) (en banc).

The *Simms* court decided that conspiracy to commit Hobbs Act robbery "does not categorically qualify as a crime of violence" under 18 U.S.C. § 924(c)'s "force clause" -- § 924(c)(3)(A) -- because such a conspiracy "does not invariably require the actual, attempted, or threatened use of physical force." *Simms*, slip op. at 6. The *Simms* court further decided that conspiracy to commit Hobbs Act robbery does not qualify as a categorical crime of violence under Section 924(c)'s "residual clause" -- § 924(c)(3)(B) -- because that clause is unconstitutionally vague. *Simms*, slip op. at 13-14.

In reaching these conclusions, the Fourth Circuit rejected the government's contention that the so-called "categorical approach" to analyzing the question of whether a particular offense qualifies as a crime of violence should be jettisoned in favor of a "conduct-specific approach." *See id.* at 18.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, I caused a copy of the foregoing **Notice** to be served by the Court's ECF Filing system on all counsel of record.

/s/ W. Michael Chick, Jr.

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